

# **An Audit of the Milwaukee County Employee Disciplinary Process**

**December 2003**

## **Committee on Finance and Audit**

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## **Milwaukee County Department of Audit**

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Joe Williams  
Stan Zaleski, CPA, CIA

### **Review Team**

Doug Jenkins  
Jim Goetzinger

### **Administrative Support Team**

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Cheryl A. Hosp  
Karen J. Williams



Department of Audit

# Milwaukee County

Jerome J. Heer  
Douglas C. Jenkins

• Director of Audits  
• Deputy Director of Audits

December 9, 2003

To the Honorable Chairman  
of the Board of Supervisors  
of the County of Milwaukee

We have completed an audit of the Milwaukee County Employee Disciplinary Process. Approximately 95% of Milwaukee County's workforce is subject to a disciplinary process governed by the civil service rules established in accordance with Chapter 63 of the Wisconsin Statutes. In 1978, the County Board created Chapter 33 of the Ordinances, which established the Personnel Review Board (PRB) to oversee disciplinary actions involving civil servants. At the core of the PRB's mission is the provision of fair and impartial due process hearings for those matters brought before it.

The report:

- Provides a statistical summary of PRB activity during the three-year period 2000—2003;
- Presents both management and labor perspectives on the County disciplinary process;
- Includes a comparison of the structure of disciplinary processes in other governmental jurisdictions for informational purposes;
- Addresses efficiency and accountability issues; and
- Addresses the need for a formal PRB policy to provide guidance regarding potential conflicts of interest.

A response from the Executive Secretary of the PRB is included as **Exhibit 4**. We appreciate the cooperation extended by the Personnel Review Board and its staff during the audit.

Please refer this report to the Committee on Finance and Audit.

A handwritten signature in black ink that reads "Jerome J. Heer".

Jerome J. Heer  
Director of Audits

JJH/cah

Attachment

cc: Milwaukee County Board of Supervisors  
Scott Walker, County Executive  
Personnel Review Board Members  
Susan Shields, Executive Secretary, Personnel Review Board  
Linda Seemeyer, Director, Department of Administrative Services  
Terry Cooley, Chief of Staff, County Board Staff  
Steve Cady, Fiscal and Budget Analyst, County Board Staff  
Lauri J. Henning, Chief Committee Clerk, County Board Staff

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# An Audit of the Milwaukee County Employee Disciplinary Process

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## Summary

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Approximately 95% of Milwaukee County's workforce is subject to a disciplinary process governed by civil service rules established in accordance with Chapter 63 of the Wisconsin Statutes. In 1978, the County Board created Chapter 33 of the Ordinances, which established the Personnel Review Board (PRB) to oversee disciplinary actions involving civil servants. Consequently, the PRB assumed the role of reviewing County management's disciplinary actions involving dismissals, demotions, suspensions in excess of 10 days and multiple suspensions of any duration that occur within a six-month period. At the core of the PRB's mission is the provision of fair and impartial due process hearings for those matters brought before it.

### **Statistical Summary**

Most of the activity of the PRB is conducted in the form of hearings to review management disciplinary decisions regarding discharge or suspension. County management's recommendations to terminate employees were upheld by the PRB, withstood re-evaluation directed by the PRB, or resulted in the employee's resignation or retirement in about 57% of the cases decided during the three-year period 2000—2002. Thus, management's recommendations to terminate employees were overruled or altered in about 43% of the cases during that same time. However, the data show that management decisions regarding employee suspensions were upheld without modification in about 81% of the cases during the same three-year period.

An important indicator of the propriety of PRB decisions is the small number that have been overturned by the courts. Records show the courts have overturned or remanded back to the PRB just 2.7% of the cases reviewed by the Board since its inception in 1979.

### **Interviews with Management and Union Leadership**

County management's perspective was obtained from several sources, including Labor Relations staff, Corporation Counsel attorneys and department heads and managers from some of the larger County departments. Management exhibited a wide range of perceptions during those interviews. Frustration was expressed that the PRB favors employees, rather than providing a 'down the middle' approach of being fair and impartial. However, perceptions that suggested the PRB 'always overturns management' are not borne out by the record.

On the other hand, several members of union leadership indicated in interviews with us that they were satisfied with the fairness and impartiality of the PRB. They indicated they felt the system was working.

### **Efficiency of the Disciplinary Process**

In an audit recommendation status report submitted to the Finance and Audit Committee in September 2003, we have acknowledged significant strides by the current Director of Labor Relations in addressing the need to proactively manage employee/management labor disputes. However, discussions with an attorney from the Corporation Counsel's office provided insight as to the consequences of the County's lack of accountability for providing direction to managers in the area of employee discipline. This attorney offered three general observations based on years of representing County management's interests before both the Civil Service Commission and the Personnel Review Board.

- County managers are not consistent in the manner in which they handle employee disciplinary issues. This observation of inconsistency applies not only to differences among departments or managers in relation to one another, but to individual managers' treatment of employees under their respective authority.
- County managers do not do a good job of adequately documenting items essential to successfully defend against challenges to disciplinary actions.
- County managers allow problems to develop far too long before addressing them.

### **Diffused Responsibility**

Similar to the grievance process, there is no single entity in Milwaukee County government that is solely responsible for administering employee discipline. Rather, it is an overall management responsibility that requires coordination among staff of the various County departments, the Division of Human Resources, and Corporation Counsel. The benefits of a sustained effort to effectively train and reinforce good, consistent labor relations practices among County supervisory and management staff include:

- Minimizing the volume of cases reaching the PRB level.
- Minimizing the time and resulting cost to process cases.
- Minimizing the resources devoted to the disciplinary process.

Data show that 75% of the cases reviewed by the PRB in 2002 were completed within six months. We estimate the direct departmental staff costs associated with disciplinary actions brought before the PRB is about \$942 per hearing, or about \$134,700 annually. This includes preparation and

travel time connected with the hearings, as well as time spent outside the formal hearing process on dispute settlement.

### **Potential Conflict of Interest**

In reviewing minutes of Personnel Review Board meetings, we became aware that the president of the Board had ongoing sub-contractual relationships with prime contractors of the Department of Public Works. According to County records, the PRB member's firm was paid more than \$1 million for services rendered as a sub-contractor to the County since September 2000. During the three-year period 2000—2002, the PRB heard 70 cases involving DPW management's disciplinary actions. According to the PRB member, she would have recused herself from any decision involving a County employee with whom she had contact, but does not consider that the indirect contractual relationship with DPW management constitutes a conflict, in and of itself. According to the Executive Secretary of the PRB, there have been many instances in the past in which members have recused themselves due to business or personal relationships with subject employees, but there is no formal policy providing guidance in this area.

### **Milwaukee County's Unique Civil Service Environment**

Milwaukee County management decisions to terminate employees were overturned or altered by the PRB in about 43% of the cases decided in the three-year period 2000—2002. This statistic could be viewed in two ways: one view would be that employees' interests are protected from unfair or unjust management termination decisions; another view would be that the PRB has been usurping management's authority, replacing its judgment for management's, and creating a situation where the employee has nothing to lose in contesting the termination.

Unlike Milwaukee County, the City of Milwaukee's management, under separate statute, is permitted to discharge an employee, subject to appeal to its Civil Service Commission. This maintains management's authority to administer the ultimate disciplinary action, yet still affords employees the right to a fair and impartial third party review. Revising the County's PRB function to more closely resemble the City of Milwaukee model is an area the Division of Human Resources may wish to explore further as it considers other civil service reforms.

We would like to acknowledge the cooperation of the Personnel Review Board and its staff during the course of this audit. A management response from the Executive Secretary of the PRB is presented as **Exhibit 4**.

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## **Background**

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As of September 2003, Milwaukee County employed about 7,315 employees, including part-time and seasonal staff. Approximately 95% of this workforce is subject to a disciplinary process governed by civil service rules established in accordance with Chapter 63 of the Wisconsin Statutes. Chapter 63 of the Statutes identifies positions to be included in the classified service (covered by civil service rules) and sets forth procedures for filling vacancies and making both regular and temporary appointments. Chapter 63 requires only those counties containing 500,000 or more residents to establish and maintain a civil service system, making Milwaukee County the lone subject of this statutory requirement. The other 71 counties in Wisconsin have the discretion to establish a civil service system. Civil Service Rules adopted for Milwaukee County have been incorporated in Chapter 17 of the General Ordinances of Milwaukee County.

### **Disciplinary Process**

In 1978, the County Board created Chapter 33 of the Ordinances, which established the Personnel Review Board (PRB) to oversee disciplinary actions involving civil servants. This was done with the specific intent of addressing a perceived conflict arising from two distinct functions of the Civil Service Commission. Specifically, the PRB was created to separate the administrative duties of establishing work rules from their quasi-judicial function of reviewing County management's application of those same rules concerning employee disciplinary actions.

Consequently, the PRB assumed the role of reviewing County management's disciplinary actions involving dismissals, demotions, suspensions in excess of 10 days and multiple suspensions of any duration that occur within a six-month period. The appointing authority must file a written complaint with the PRB when pursuing any of these disciplinary actions. In turn, employees are entitled to a due process hearing of the charges before the PRB. Chapter 33 of the Ordinances also gave the PRB responsibility for hearing non-represented employees' grievances in general. (Represented employees have separate grievance procedures as established in their respective labor agreements.) In addition, the PRB adjudicates charges filed against persons violating Chapter Nine (Code of Ethics) of the County Ordinances.

At the core of the PRB's mission is the provision of fair and impartial due process hearings for those matters brought before it. The direct property tax levy budgeted to operate the PRB was approximately \$145,000 for 2003. The PRB is comprised of five members and is staffed by two administrative employees who also provide administrative support for the Ethics Board. PRB

members receive no salary, but are provided a stipend of \$3,486 annually and are eligible to participate in the County's health and dental care plans, at the County's full premium cost and at their own expense. (Currently, one of the five PRB members participates in the County's dental plan.)

It should be noted that, while civil service rules generally govern and set the context for employee disciplinary actions, the labor contract with the County's largest bargaining unit, District Council 48 of the American Federation of State, County and Municipal Employees (DC 48), stipulates to the rules in existence as of 1987. By virtue of that contractual stipulation, the County has essentially agreed that all changes to the 1987 work rules are subject to negotiation for employees represented by DC 48, or about 70% of the County workforce.

### **Disciplinary Process**

**Exhibit 3** depicts the generalized process for employee disciplinary measures administered by Milwaukee County management. The flowchart reflects different paths in the general progression of events for represented versus non-represented employees, as well as for civil service versus exempt employees. Written reprimands and short-term suspensions that are not within the jurisdiction of the PRB were not included in this review.

### **Other Jurisdictions**

We conducted a survey of other jurisdictions' structures for employee disciplinary processes for informational purposes only. Jurisdictions surveyed included:

- Waukesha County
- Dane County
- Wisconsin Department of Employee Relations
- Wisconsin Personnel Commission
- Cuyahoga County, Ohio
- Hamilton County, Ohio
- City of Milwaukee

The following general characteristics were noted from information provided by the jurisdictions surveyed.



- Similar to Milwaukee County, all the other jurisdictions had an established review body for represented employees and non-represented employees in civil service positions.
- Where applicable, the chief executive (governor, county executive, mayor) appoints review body members (some with legislative branch confirmation) and arbitrators are selected by mutual agreement of the union and management representatives. Milwaukee County's process for appointments is consistent with that of the surveyed jurisdictions that include legislative branch confirmation.
- Generally, represented employees of the surveyed jurisdictions have the option of utilizing the grievance process leading to arbitration to contest disciplinary actions. A few of these same jurisdictions can also utilize a civil service commission as an option to review disciplinary actions.
- The options available to non-represented employees to contest disciplinary actions varied from utilization of a grievance procedure leading to arbitration in one instance, contesting the action before a civil service commission in two instances, and having the action heard before a state body in the remaining instances.
- In nearly all jurisdictions there is some form of computerized tracking or information system to help manage the disciplinary process, as is the case with Milwaukee County.
- None of the other jurisdictions surveyed had established outcome measurements or standards used to gauge the level of performance of the process. In contrast, Milwaukee County has established outcome measures for its process. However, these measures are output driven.
- Three of the other jurisdictions had a mechanism to identify and troubleshoot work areas in which disciplinary actions occur most frequently. Milwaukee County has a mechanism in place to identify types of actions by department.

The results of our survey, which compares highlights of Milwaukee County's structure for employee discipline with that of other jurisdictions, is included as **Exhibit 2**.

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## Section 1: Personnel Review Board Activity

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**The primary goal of the Personnel Review Board (PRB) is to provide a fair and impartial forum for reviewing personnel disciplinary actions.**

The primary goal of the Personnel Review Board (PRB) is to provide a fair and impartial forum for reviewing personnel disciplinary actions. Following is a statistical summary highlighting two major types of reviews conducted by the Board during the past three years.

### Statistical Summary

Most of the activity of the PRB is conducted in the form of hearings to review management disciplinary decisions regarding discharge or suspension. **Table 1** shows the number and disposition of discharge hearings conducted by the PRB for the three-year period 2000—2002.

<b>Table 1 PRB Discharge Hearing Statistics 2000—2002</b>					
<b><u>Discharge Hearing Actions</u></b>	<b><u>2000</u></b>	<b><u>2001</u></b>	<b><u>2002</u></b>	<b><u>Total</u></b>	<b><u>3-Yr.%</u></b>
<b>Total Terminations<sup>1</sup></b>	<b>48</b>	<b>48</b>	<b>40</b>	<b>136</b>	<b>57.4%</b>
<b>Total Non-Terminations<sup>2</sup></b>	<b><u>34</u></b>	<b><u>34</u></b>	<b><u>33</u></b>	<b><u>101</u></b>	<b><u>42.6%</u></b>
<b>Total Discharge Hearings</b>	<b>82</b>	<b>82</b>	<b>73</b>	<b>237</b>	<b>100.0%</b>
<sup>1</sup> Includes discharges, resignations/retirements and failed re-evaluations.					
<sup>2</sup> Includes lesser disciplinary measures imposed by the Board.					
Source: PRB Statistics 10/30/03					

**Management's recommendations to terminate employees were overruled or altered in about 43% of the cases.**

As the data in **Table 1** show, management's recommendations to terminate employees were upheld by the PRB, withstood re-evaluation directed by the PRB, or resulted in the employee's resignation or retirement in about 57% of the cases decided during the three-year period 2000—2002. Thus, management's recommendations to terminate employees were overruled or altered in about 43% of the cases during that same time.

**Table 2** shows the number and disposition of suspension hearings conducted by the PRB for the three-year period 2000—2002.

<b>Table 2</b> <b>PRB Suspension Hearing</b> <b>Statistics 2000—2002</b>					
<b><u>Suspension Hearing Actions</u></b>	<b><u>2000</u></b>	<b><u>2001</u></b>	<b><u>2002</u></b>	<b><u>Total</u></b>	<b><u>3-Yr. %</u></b>
Enforced by Board	46	53	43	142	80.7%
Reduced by Board	2	1	1	4	2.3%
Dismissed by Board/Withdrew or Reduced by Dept.	<u>9</u>	<u>5</u>	<u>16</u>	<u>30</u>	<u>17.0%</u>
<b>Total Suspension Hearings</b>	<b>57</b>	<b>59</b>	<b>60</b>	<b>176</b>	<b>100.0%</b>

Source: PRB Statistics 10/30/03

**Management decisions regarding employee suspensions were upheld without modification in about 81% of the cases.**

The data in **Table 2** show that management decisions regarding employee suspensions were upheld without modification in about 81% of the cases during the three-year period 2000—2002.

An important indicator of the propriety of PRB decisions is the small number that have been overturned by the courts. According to PRB records, a total of 514 cases have been fully contested and resulted in formal orders of the Board since its inception in 1979. Of these 514 decisions, 74 (14.4%) have been appealed in court. **Table 3** provides a breakout of the 514 PRB decisions.

**Table 3**  
**Disposition of PRB Cases**  
**1979—September 2003**

<u>Disposition of PRB Cases</u>	<u>Number of Cases</u>	<u>Percent</u>
PRB Rulings Accepted by Both Parties	440	85.6
Court Affirmed PRB Rulings	57	11.1
PRB Rulings Overturned	8	1.5
Remanded back to PRB by Courts	6	1.2
Cases Dismissed by Court	2	0.4
Appeals Pending	<u>1</u>	<u>0.2</u>
<b>Total PRB Cases</b>	<b>514</b>	<b>100.0%</b>

Source: PRB Statistics 10/30/03

**Courts have overturned or remanded back to the PRB just 2.7% of the cases reviewed by the Board since its inception in 1979.**

As the data in **Table 3** show, the courts have overturned or remanded back to the PRB just 2.7% of the cases reviewed by the Board since its inception in 1979.

### **Interviews with Management and Union Leadership**

We conducted several interviews designed to obtain the perspectives of both County management and union leadership. County management's perspective was obtained from several sources, including Labor Relations staff, Corporation Counsel attorneys and department heads and managers from some of the larger County departments. Management exhibited a wide range of perceptions during those interviews. This included the perception that the PRB favors employees. However, perceptions that suggested the PRB 'always overturns management' are not borne out by the record, as reflected in the data presented in **Tables 1—3**.

**Perceptions that suggested the PRB 'always overturns management' are not borne out by the record.**

### Management Interviews

One County department that has a recent history of frequent labor/management relations disputes is the Department of Public Works (DPW). For instance, as noted in our March 2003 audit of the grievance process, DPW led all County departments with a rate of 27.3 grievances filed per 100 represented employees during 2002.

Conversely, the Parks Department had just 2.2 grievances filed per 100 represented employees during 2002. In the March 2003 report, we credited Parks Department management with good, open communications, using regular meetings with union representatives to diffuse issues that, left unattended, could escalate to more serious strains in labor/management relations. (The Department of Public Works and the Parks Department were merged in the 2004 Adopted Budget.)

We interviewed several top-level managers from both DPW and Parks regarding the grievance and disciplinary processes and noted the following observations from management's perspective:

**Interviews with several top-level managers noted that the disciplinary process through the PRB takes far too long.**

- The disciplinary process through the PRB takes far too long. It is typical to require three meetings (the Board typically meets bi-weekly) before a decision is made. The PRB has nothing to do with operating efficiency. Long delays in resolving disputed disciplinary actions leaves management in a state of 'limbo,' wherein an employee may be suspended from work pending discharge, yet management cannot fill that position while the outcome remains uncertain.
- The PRB is comprised of people not in tune with what it takes for a manager to manage.
- The PRB does not enforce a rule (established in accordance with Chapter 63 of the State Statutes) that hearings take place within 21 days of a disciplinary action. Extensions are granted for almost any reason.
- Frustration was expressed that the PRB favors employees, rather than providing a 'down the middle' approach of being fair and impartial.

On the other hand, several members of union leadership indicated in interviews with us that they were satisfied with the fairness of the process.

#### DC 48 Leadership Interviews

The following observations were made during an interview with DC 48 leadership.

**Interviews with DC48 leadership noted a perceived lack of consistency among County departments in their administration of employee disciplinary measures.**

- During our interview, union leadership expressed frustration over a perceived lack of consistency among County departments in their administration of employee disciplinary measures. It was noted that Parks had a practice of holding suspensions in abeyance for six months. If there were no subsequent infractions during the six-month period, the initial infraction was 'wiped out.' Other departments view disciplinary actions as punishment, rather than opportunities for corrective action.
- Concerns were expressed that any attempt to streamline the proceedings of the PRB or reduce costs would diminish workers' due process rights.
- In general, the union representatives indicated they were satisfied with the fairness and impartiality of the PRB. They indicated they felt the system was working.

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## Section 2: Efficiency of the Disciplinary Process

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**Our previous Employee Grievance Process audit stated that part of the cause identified for increased grievance filings was an absence of an effective effort to proactively manage employee/management labor disputes.**

In March 2003, we issued an Audit of the Milwaukee County Employee Grievance Process. In that report, we noted that the number of union represented employees had decreased by about 10% from January 2000 to January 2003, yet the number of written grievances filed annually had nearly doubled, from 264 in 2000 to 498 in 2002, an increase of 89%. Also in that report, we conservatively estimated the staff costs associated with the grievance process are about \$250,000 annually.

Part of the cause identified for the increased grievance filings was an absence of an effective effort to proactively manage employee/management labor disputes. This was evident in several respects, including:

- There were problems with the accuracy and integrity of grievance data maintained by Labor Relations;
- There is no meaningful attempt at data analysis and problem identification;
- For lack of appropriate data collection and analysis, there was no ability to devise corrective action or develop strategies to improve labor relations;
- There was no assurance of consistency over time or among different County supervisors/management in dealing with the same or similar contract disputes;
- Attitudes on the part of both management and the County's largest labor union reflected a position that each party suspected the other was more interested in protecting turf or 'winning' rather than resolving conflict; and
- There was no sustained effort to provide County managers and front-line supervisors with training or guidance on the particulars of the County's eight collective bargaining agreements.

It is important to note that the observations contained in the March 2003 audit of the grievance process pre-dated the tenure

of the current Director of Labor Relations, as well as the placement of the labor relations function within the Division of Human Resources. In an audit recommendation status report submitted to the Finance and Audit Committee in September 2003, we have acknowledged significant strides by the current Director of Labor Relations in addressing the issues raised in the March 2003 audit.

**The issues identified in the March 2003 audit of the grievance process have significant relevance to the cases that are ultimately brought before the Personnel Review Board.**

The issues identified in the March 2003 audit of the grievance process have been recapped here because they have significant relevance to the cases that are ultimately brought before the PRB. Whereas excessive employee grievances may be reflective of poor employee/management relations, the grievance process is designed to provide a forum for the airing of disagreements and a framework for resolving disputes regarding the appropriate interpretation and application of established labor contract provisions. Unresolved disputes can foster resentment and escalate behaviors that may ultimately lead to disciplinary actions. To avoid this progression of events, prevention is key. Proper training and management practices up front saves line staff, management, legal and administrative time and expense at the back end.

**An attorney from the Corporation Counsel's office provided insight as to the consequences of the County's lack of accountability for providing direction to managers in the area of employee discipline.**

Discussions with an attorney from the Corporation Counsel's office provided insight as to the consequences of the County's lack of accountability for providing direction to managers in the area of employee discipline. This attorney offered three general observations based on years of representing County management's interests before both the Civil Service Commission and the Personnel Review Board.

- County managers are not consistent in the manner in which they handle employee disciplinary issues. This observation of inconsistency applies not only to differences among departments or managers in relation to one another, but to individual managers' treatment of employees under their respective authority.



**There is no single entity in Milwaukee County government that is solely responsible for administering employee discipline.**

- County managers do not do a good job of adequately documenting items essential to successfully defend against challenges to disciplinary actions.
- County managers allow problems to develop far too long before addressing them.

### **Diffused Responsibility**

Similar to the grievance process, there is no single entity in Milwaukee County government that is solely responsible for administering employee discipline. Rather, it is an overall management responsibility that requires coordination among staff of the various County departments, the Division of Human Resources, and Corporation Counsel. The Labor Relations section of the Division of Human Resources has recently taken a lead role in this coordination effort that is essential to provide informed, consistent treatment of issues requiring employee disciplinary actions. The benefits of a sustained effort to effectively train and reinforce good, consistent labor relations practices among County supervisory and management staff include:

- Minimizing the volume of cases reaching the PRB level.
- Minimizing the time and resulting cost to process cases.
- Minimizing the resources devoted to the disciplinary process.

The PRB maintains statistics on the time frames in which cases are completed. Based on a sample of 50 cases heard during the three-year period 2000—2002, we verified the accuracy of the data maintained by the PRB. **Table 4** shows the breakout for cases heard in 2002.

**Table 4**  
**PRB Case Completions**  
**2002 Time Frames**

<u>Time Frame</u>	<u>Percent</u>	<u>Cumulative %</u>
0 to 3 months	39%	
3+ to months	36%	75%
6+ to 9 months	13%	88%
9+ to 12 months	7%	95%
more than one year	5%	100%

Source: PRB Statistics 10/30/03

As the data in **Table 4** show, 75% of the cases reviewed by the PRB in 2002 were completed within six months.

**We estimate the direct departmental staff costs associated with disciplinary actions brought before the PRB is about \$942 per hearing, or about \$134,700 annually.**

There is currently no means of identifying the actual cost of staff resources consumed by the employee disciplinary process. However, using rough estimates based on the typical number and type of staff present at PRB hearings, we calculated a conservative estimate of direct departmental staff costs associated with disciplinary actions brought before the Board. Using this approach, we estimate the direct staff costs associated with actions brought before the PRB is about \$942 per hearing, or about \$134,700 annually. This includes preparation and travel time connected with the hearings, as well as time spent outside the formal hearing process on dispute settlement.

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## Section 3: Other Issues

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**The PRB President's ongoing sub-contractual relationship with a prime contractor of a County department presents at least the appearance of a conflict of interest.**

During the course of this audit, two issues came to light that merit discussion in this final report. The first issue involves potential conflicts of interest for members of the Personnel Review Board. The second issue concerns the overall context in which disciplinary actions are administered in Milwaukee County under the Civil Service structure established by current State Statutes.

### **Potential Conflict of Interest**

In reviewing minutes of PRB meetings, we became aware that the president of the Board had ongoing sub-contractual relationships with prime contractors of the Department of Public Works. According to County records, the PRB member's firm was paid more than \$1 million for services rendered as a sub-contractor to the County since September 2000. During the three-year period 2000—2002, the PRB heard 70 cases involving DPW management's disciplinary actions. According to the PRB member, she would have recused herself from any decision involving a County employee with whom she had contact, but does not consider that the indirect contractual relationship with DPW management constitutes a conflict, in and of itself.

However, this financial interest, whether direct or indirect, with Milwaukee County management presents at least the appearance of a conflict of interest for the PRB member. At a minimum, the relationship could be perceived as placing undue influence on any decision the PRB member might make concerning the actions of the County, particularly those involving DPW.

Another member of the PRB works for a law firm that has performed a very small amount of legal work under a contract

with the Corporation Counsel's office. Although the small contract was for follow-up on work performed in 1999 and has been closed since May of 2003, the member was appointed to the PRB two months earlier. Since Corporation Counsel represents management's interests in all PRB hearings, we believe it presents a potential conflict when that office contracts with a firm associated with any PRB member.

According to the Executive Secretary of the PRB, there have been many instances in the past in which members have recused themselves due to business or personal relationships with subject employees, but there is no formal policy providing guidance in this area.

To avoid the appearance of a conflict of interest, we recommend the Personnel Review Board:

- 1. Amend its rules to require any member with a contractual relationship with a Milwaukee County department, whether direct or in a sub-contracting capacity, recuse him/herself from cases involving management of such department, and to provide guidance regarding other instances in which members may have a potential conflict of interest.*

Alternatively, the County Board may wish to amend Chapter 33 of the Ordinances to include a general prohibition against County contractual relationships, either direct or in a sub-contracting capacity, for Personnel Review Board members.

### **Milwaukee County's Unique Civil Service Environment**

As previously noted, Wisconsin Statutes treat Milwaukee County in unique fashion regarding the establishment of a civil service structure. In accordance with Chapter 63 of the State Statutes, Milwaukee County management's decisions to discharge a civil service employee must be recommended to the PRB, who makes the ultimate decision. As noted in **Section 1** of this report, those decisions were overturned or altered in about 43% of the cases decided in the three-year period 2000—2002. This

statistic could be viewed in two ways: one view would be that employees' interests are protected from unfair or unjust management termination decisions; another view would be that the PRB has been usurping management's authority, replacing its judgment for management's, and creating a situation where the employee has nothing to lose in contesting the termination.

**Unlike Milwaukee County, the City of Milwaukee's management, under separate statute, is permitted to discharge an employee, subject to appeal to its Civil Service Commission.**

Unlike Milwaukee County, the City of Milwaukee's management, under separate statute, is permitted to discharge an employee, subject to appeal to its Civil Service Commission. This maintains management's authority to administer the ultimate disciplinary action, yet still affords employees the right to a fair and impartial third party review.

In September 2003, in a report to the Finance and Audit Committee regarding the status of implementing recommendations contained in a June 2002 audit report on the County's hiring process, the Division of Human Resources stated in part:

"...The Division of Human Resources is currently evaluating Civil Service Rules and preparing recommendations to address changes that will make the certification and hiring process more expedient.... A deadline of January 2004 has been established to forward recommendations for changes to the Personnel Committee and the Civil Service Commission."

**Revising the County's PRB function to more closely resemble the City of Milwaukee model is an area DHR may wish to explore further as it considers other civil service reforms.**

Revising the County's PRB function to more closely resemble the City of Milwaukee model is an area the division may wish to explore further as it considers other civil service reforms.

Regarding civil service reform, Chapter 33 of the General Ordinances of Milwaukee County charges the PRB with two separate review functions. Section 33.03 (1) requires an annual review of the rules, practices and procedures of the Civil Service Commission, and further requires that the PRB submit a written report thereon to the Commission, the County Executive and the

**The last available report from the Personnel Review Board is dated April 1985 and covers the rules in effect in 1983.**

County Board. The last available report from the Personnel Review Board is dated April 1985 and covers the rules in effect in 1983. According to the Executive Secretary of the PRB, this annual review was discontinued when the County Board eliminated funding for the task, which had been performed on a contract basis with outside consultants.

Section 33.05 (2) of the ordinances indicates all existing rules of the Civil Service Commission shall be referred to the County Board for review...on April 1, 1982, and every four years thereafter. Taken in the context of the preceding subsection of the ordinance, it appears responsibility for this referral falls upon the Director of Human Resources. We were unable to find any record of such a referral in the past several years.

Given the lack of adherence to these review provisions in Chapter 33 of the ordinances and the current effort on the part of the Division of Human Resources to study civil service reforms, we recommend the Personnel Review Board:

2. *Refer the civil service rules review provisions contained in sections 33.03 (1) and 33.05 (2) of the County Ordinances to the Division of Human Resources for inclusion in its review of potential civil service reforms.*

## Audit Scope

The audit of the Employee Disciplinary Process was conducted in accordance with standards set forth in the United States General Accounting Office *Government Audit Standards*, with the exception of the standard related to periodic peer review. We limited our review to the items specified in this Scope section. During the course of this audit we performed the following:

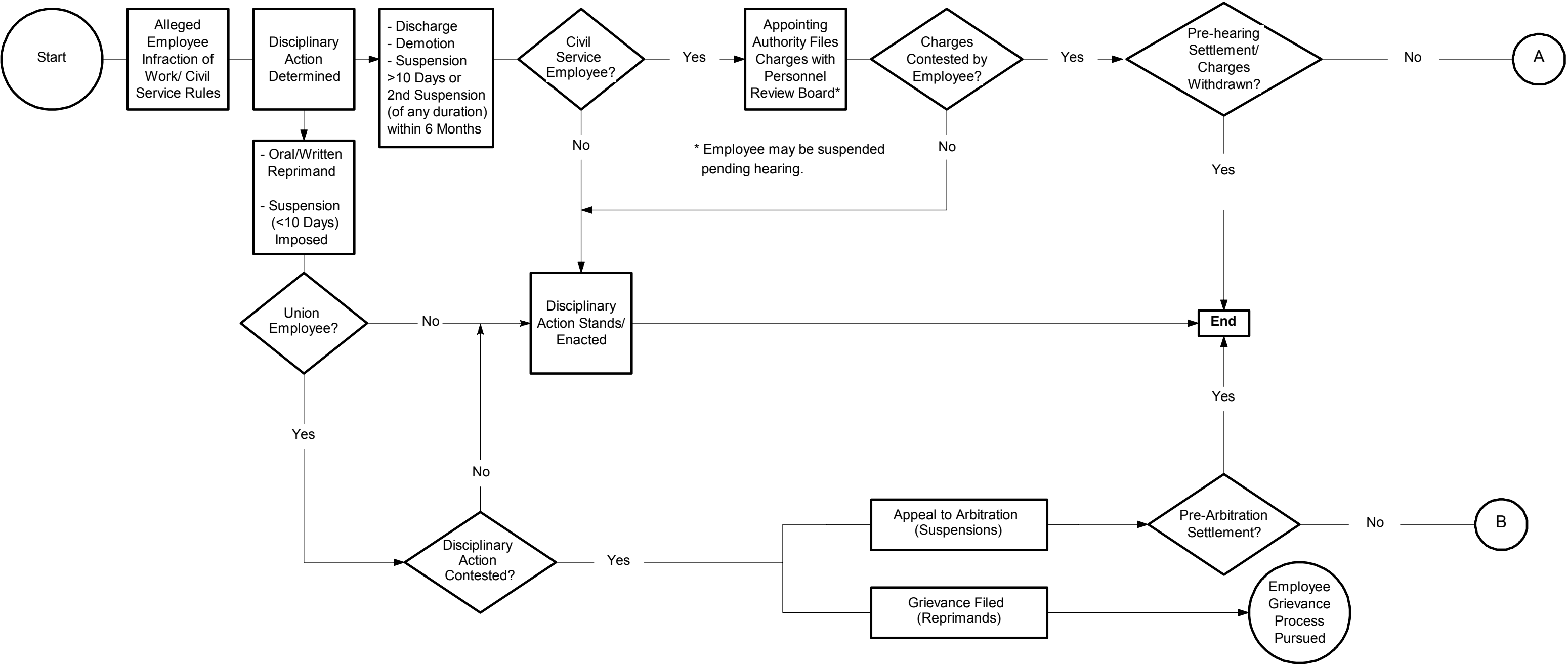
- Interviewed human resource managers within various County departments; staff of the Corporation Counsel and Labor Relations offices, and AFSCME—District Counsel 48 officials.
- Interviewed the president, vice president, and administrative staff of the Personnel Review Board.
- Reviewed applicable Wisconsin Statutes, County Ordinances, and Personnel Review Board Rules of Procedure regarding the discipline of civil service employees.
- Analyzed case data maintained by the Personnel Review Board for the period 2000—2002.
- Conducted a general survey of six other jurisdictions for data related to employee discipline.
- Developed an estimate of departmental staff costs associated with the employee disciplinary process through the hearing decision issued by the Personnel Review Board.
- Performed a detailed review of a sample of 50 cases brought before the Personnel Review Board to verify the reasonableness of data contained in PRB activity reports.
- Reviewed applicable County budget information related to the Personnel Review Board.

Survey of Other Jurisdictions –Structure of Employee Disciplinary Process

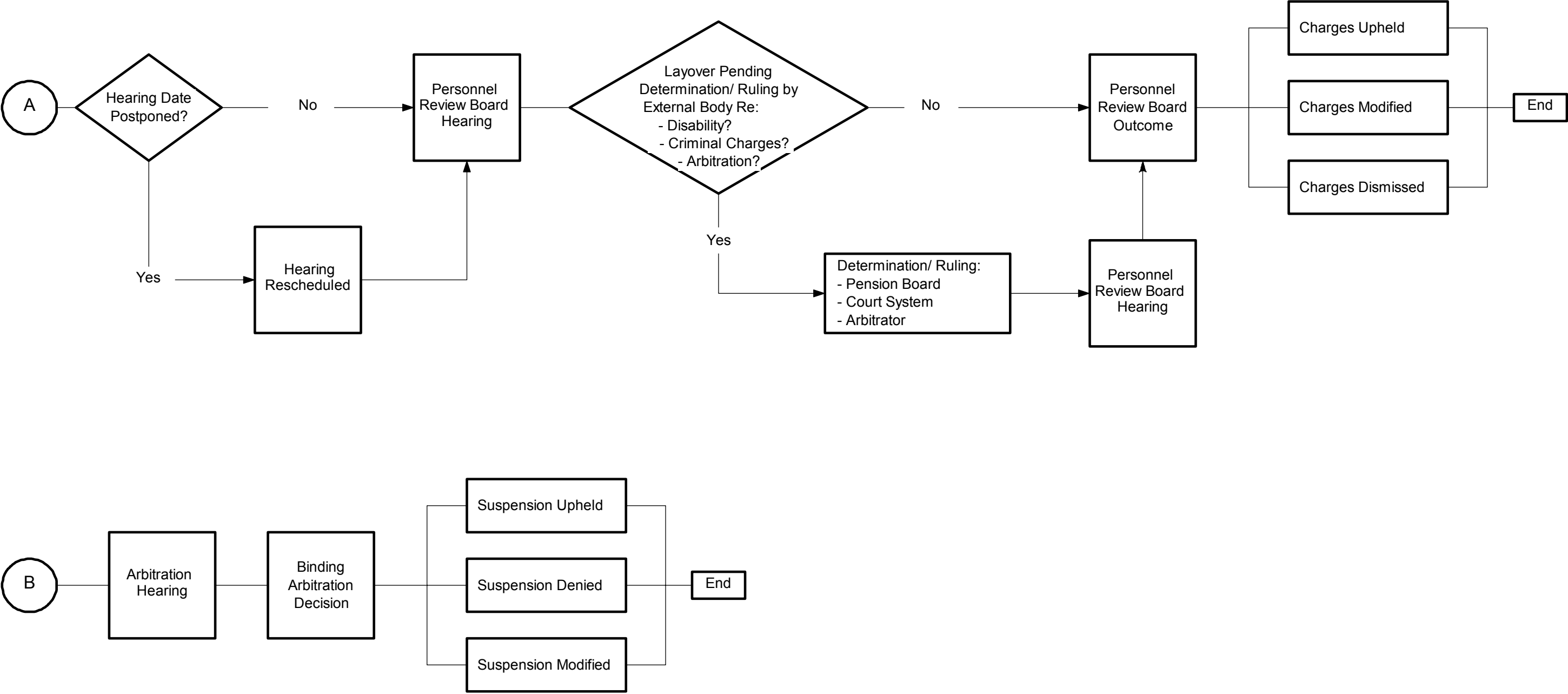
Questions	Waukesha County	Dane County	WI Dept. of Employee Relations	WI Personnel Commission	Cuyahoga County, Ohio	Hamilton County, Ohio	City of Milwaukee	Milwaukee County
1. Is there a Review Body for Union Employees?	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes
2. Is there a Review Board for Non-Union Employees?	Yes	Yes	N/A	Yes	Yes-for Non-represented in civil service	Yes – for Non-represented in civil service	Yes	Yes
3. How are members of a Board appointed?	No Board	By the County Executive		Nominated by the Governor, Confirmed by Senate	Nominated by Governor, with consent of Senate	By the Governor	By the Mayor	By the County Executive, confirmed by County Board
4. How is the Arbitrator Selected?	County chooses an Arbitrator. Union chooses and Arbitrator. County and Union chooses Arbitrator	By mutual Agreements or process of elimination	Depending on Contract – from a panel mutually agreed to by the parties or from a random panel from WERC.	N/A	By mutual agreement	By mutual agreement	By mutual agreement	Union and Personnel Committee choose arbitrator (DC 48)
5. What option is available for represented employees?	Grievance procedure leading to arbitration	Grievance procedure leading to arbitration or may use civil service commission	Grievance procedure leading to arbitration	See Dept. of Employee Relations	Provision of Contract	May use Grievance process option - arbitration	Grievance procedure leading to arbitration or may use City Service Commission	Appeal lesser-term suspension to arbitration. Personnel Review Board, if in Civil Service
6. What option is available for Non-represented employees?	Grievance procedure leading to arbitration	May use the Civil Service Commission	See Wisconsin Personnel Commission	May appeal to the State Personnel Commission	State Personnel Review Board	Can appeal to the State Personnel Board Review	May use the City Service Commission	May use the Personnel Review Board, if in Civil Service
7. Is there a computerized tracking or information system in place to help manage the disciplinary process?	Yes	Yes	Yes	Yes	No	No	Yes	Yes
8. Are outcome measurements/standards used to measure performance of the process?	No	No	No	No	No	No	No	Yes
9. Is there a mechanism in place to identify and troubleshoot work areas in which disciplinary actions occur most frequently?	Yes	No	No	No	Yes	No	Yes	Yes



Flow Chart of Milwaukee County's  
Employee Disciplinary Process



Flow Chart of Milwaukee County's  
Employee Disciplinary Process  
(Continued)





# Milwaukee County

SUSAN C. SHIELDS • Executive Secretary

## PERSONNEL REVIEW BOARD STAFF RESPONSE December 8, 2003

1. On the Audit recommendation: ***Amend the PRB rules to require any member with a contractual relationship with a Milwaukee County department, whether direct or in a sub-contracting capacity, recuse him/herself from cases involving management of such department, and to provide guidance regarding other instances in which members may have a potential conflict-of-interest.***

Agree in part. This audit report has not yet been presented to the Personnel Review Board Members nor have the members had any opportunity to review it and respond due to concerns from the Auditors about the draft document becoming public record. The Executive Secretary of the Personnel Review Board reviewed the draft document and the Department of Audit agreed to distribute copies of the audit report to Personnel Review Board members. The audit report and its recommendations will be discussed by the Board within the next two months. It is not expected that the Board would object to formalizing its current policy of recusal, however the rule change as proposed by the Audit Department would probably be expanded and is not recommended for adoption in its current form.

The proposed Audit rule change is too limited in scope and would not address recusal in many other situations that have presented themselves to Personnel Review Board members requiring recusal. All members of the Personnel Review Board have potential conflicts-of-interest, not only by virtue of contractual relationships with the County, but by any business relationship in the community as well as any personal, social, political, and community associations that may bias and prevent a fair and impartial hearing. It has been the policy and procedure of the Board, since its inception, for Board members to recuse themselves when there is any presenting circumstance that might bias the outcome or to consider such matters when presented by a request or motion of either of the parties. By way of example: The current PRB Board President has never had a conflict-of-interest arising from any business relationship with any employee who has appeared before the Board, nor have either of the parties in proceedings raised an objection that they believe she has had one. However, objections have been raised by virtue of personal associations and community ties for the current Board President and other members. A past President of the Board had a business conflict-of-interest requiring recusal when he served as attorney in a criminal matter which was associated with a case before the Board. Other members of the current Board also have contractual relationships which have the potential for recusal.

COURTHOUSE, ROOM 212 • 901 N. 9<sup>TH</sup> STREET • MILWAUKEE, WI 53233 • TELEPHONE 414-278-4218 • FAX 414-223-1897

### Board Members

HELEN J. DIXON • President

MARY LOU LINTON • Vice President

PAUL E. PRENTISS • ROBERT W. SCHROEDER • PATRICK DOYLE

It is likely that the Board, after consideration of the matter, would follow its standing policy and emulate the provisions covering recusal reflected in the State of Wisconsin Administrative Code which calls for the disqualification (recusal) of members for conflicts-of-interest and reads as follows: *"If a commissioner is unqualified to render a decision for reasons of conflict-of-interest or bias, the commissioner shall not participate in the commission's consideration of the case before it. If a party deems a commissioner to be unqualified for reason's of conflict-of-interest or bias, the party may move for disqualification..."*

The Personnel Review Board has a mechanism for making rule changes that requires the public posting of proposed changes and public comment for a period of two weeks before rule changes are implemented. It is expected that a rule change relating to recusal could be implemented in a one or two month period.

2. On the Audit recommendation: ***Refer the civil service rules review provisions contained in Section 33.03(1) and 33.05(2) of the County Ordinances to the Division of Human Resources for inclusion in its review of potential civil service reforms.***

Agree in part. Chapter 33.03(1) requires the Personnel Review Board to conduct an annual review of the rules, practices and procedures of the civil service commission and submit a written report to the commission, the County Executive, and the County Board. This review was conducted each year by an outside consultant between 1979-1985 with about \$10,000 in budgeted funds, first by Arthur-Young and Company and then by James W. Schreier, Phd., College of Business Administration at Marquette University. Because of concerns regarding increasing costs, the County Board of Supervisors cut the funding for the consultant study from the 1985 budget forward. The PRB Board has always been ready to conduct the study of the civil service rules, but the scope relating to all aspects civil service functioning, ie. recruitment, classification, training, performance evaluation, affirmative action, administration, and problem resolution does require the assistance of a consultant. If the County Board of Supervisors still wants the civil service rules to be reviewed by an independent source, it may wish to restore sufficient funds so that this may occur. The consultant review need not be conducted on an annual basis, but could be done periodically, as a cost saving measure.

Another option for consideration by the County Board of Supervisors would be to reduce the scope of the annual review from a review and recommendations of all civil service functions to a review and recommendations of disciplinary matters. Some PRB Board members have expressed a desire to communicate certain concerns regarding the handling of disciplinary matters to the Department of Human Resources, Labor Relations, County Executive, and County Board of Supervisors on a more formal basis. This would not require the expenditure of additional funds. The Board of Supervisors may want to specify what issues, if any, they wish the Personnel Review Board to address in this regard.

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Susan C. Shields, Executive Secretary